

**DRAFT –PUBLIC COMMENT DRAFT
PUBLICATION DATE – 12/3/13**

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:)
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)
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General Chemical Corporation)
_____)

File No.: ACO-NE-12-3A____

ADMINISTRATIVE CONSENT ORDER

I. THE PARTIES

1. The Department of Environmental Protection (“Department” or “MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Northeast Regional Office at 205B Lowell Street, Wilmington, MA, 01887.
2. General Chemical Corporation (“GCC”) is a Massachusetts corporation with a place of business at 133 Leland Street, Framingham, Massachusetts. GCC operates its business at 133 Leland Street, Framingham, Massachusetts, and operates a Treatment, Storage and Disposal Facility, as that term Facility is defined in 310 CMR 30.000, at 133 Leland Street, Framingham, including all buildings and structures thereon (“TSDF”). GCC’s mailing address for purposes of this Consent Order is 133 Leland Street, Framingham, Massachusetts.
3. Trinity General Corporation (“Trinity General”) is a Massachusetts corporation with a place of business at 138 Leland Street, Framingham, Massachusetts. Trinity General owns the tract of land known as 133 Leland Street on which the TSDF operates (“Property”). Trinity General’s mailing address is 138 Leland Street, Framingham, Massachusetts.

II. STATEMENT OF FACTS AND LAW

4. MassDEP is responsible for regulating the storage, collection, transport, treatment, disposal and use of hazardous waste, the licensing of facilities for such storage, collection, transport, treatment and disposal and the protection of the public health, safety, welfare and the environment pursuant to the Massachusetts Hazardous Waste Management Act at M.G.L. c. 21C and regulations promulgated thereunder as the Hazardous Waste Regulations at 310 CMR 30.000 *et seq.*, and through an authorization of federal authority from the United States Environmental Protection Agency (“U.S. EPA”) under the Resource Conservation and Recovery

Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”) and its implementing regulations at 40 CFR Part 239-282 and associated federal RCRA guidance.

5. MassDEP is charged with the implementation and enforcement of the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, as amended, (“M.G.L. c. 21E”) and the regulations promulgated thereunder as the Massachusetts Contingency Plan at 310 CMR 40.0000 *et seq.* (“MCP”).

6. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 *et seq.* to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

7. Unless otherwise indicated, the terms used herein shall have the meaning given to them by M.G.L. c. 21C and the Hazardous Waste Regulations at 310 CMR 30.000 *et seq.*, M.G. L. c. 21E and/or the MCP.

8. GCC is the current operator and Trinity General is the current owner of the Property at or from which there is or has been a release and/or threat of release of oil and/or hazardous material pursuant to M.G.L. c. 21E. For purposes of this Administrative Consent Order (“Consent Order”), the term “Site” shall mean the Property and any other place or area where oil and/or hazardous material has come to be located, to which MassDEP has assigned Release Tracking Number (“RTN”) 3-19174. GCC and Trinity General are Responsible Parties (“RPs”) for the Site as the operator and owner, respectively.

9. The following facts and allegations have led MassDEP to issue this Consent Order:

A. GCC operates the TSDF pursuant to Hazardous Waste License #27B-06 dated July 18, 2006, issued by MassDEP pursuant to M.G.L. c. 21C, § 7, 310 CMR 30.000 *et seq.*, its federal authorization to issue hazardous waste facility permits under RCRA, and the RCRA Corrective Action regulations at 40 CFR 264.100 and 264.101, which are incorporated by reference into 310 CMR 30.000 *et seq.*, (“License”). In the License, GCC is required, among other things, to complete its closure, post-closure and Corrective Action obligations at the Site under 310 CMR 30.000 *et seq.* and RCRA and its implementing regulations. The TSDF is currently registered with MassDEP as a Large Quantity Generator (“LQG”) of Hazardous Waste pursuant to 310 CMR 30.000 *et seq.*

B. GCC has been conducting Corrective Action measures to assess and to remediate certain releases of oil and hazardous material from the Site to the environment under the hazardous waste statutes and regulations pursuant to specific provisions of its License. To date, MassDEP has been overseeing GCC’s assessment and remediation work under its Corrective Action authorities.

C. In a letter dated March 1, 2012, in accordance with 310 CMR 30.583(3)(b), GCC notified MassDEP of its intent to close the TSDF and to stop accepting incoming waste

deliveries as of March 30, 2012. GCC also informed MassDEP of its intent to surrender its License for the TSDF after closure. Pursuant to 310 CMR 30.602(10), closure of the TSDF and surrender of the License require that MassDEP establish an enforceable mechanism for oversight of the completion of closure, post-closure and Corrective Action. Pursuant to the terms of M.G.L. c. 21C and 310 CMR 30.000 *et seq.*, MassDEP is authorized to issue an order for completion of closure and post-closure requirements, including, without limitation, Corrective Action and response action measures under both M.G.L. c. 21C and 310 CMR 30.000 and M.G.L. c. 21E and the MCP.

D. 310 CMR 30.602(10) provides that a post-closure order will address all applicable groundwater monitoring, unsaturated zone monitoring, Corrective Action and post-closure care requirements at 310 CMR 30.000 *et seq.* Pursuant to 310 CMR 30.602(9), facility owners and operators subject to post-closure are subject to the Corrective Action provisions of 40 CFR 264.101 and subject to the provisions of 310 CMR 40.0000 *et seq.* M.G.L. c. 21E, §9 and 310 CMR 40.0170(9) authorize MassDEP to enter into a consent order with an RP, which sets forth necessary response actions, time periods, deadlines for the performance thereof, and requirements for submittals to MassDEP. This Consent Order shall serve as the mechanism for MassDEP to ensure compliance with both the requirements of M.G.L. c. 21C and 310 CMR 30.000 *et seq.* and M.G.L. c. 21E and 310 CMR 40.0000 *et seq.*

E. On August 17, 2012, the Site was designated as a Public Involvement Plan Site pursuant to M.G.L. c. 21E, § 14(a) and 310 CMR 40.1400 *et seq.* Public Involvement Activities undertaken at disposal sites are designed primarily to provide the public with information regarding the risks posed by the Site, status of response actions, availability of technical assistance grants and opportunities for public involvement. In accordance with 310 CMR 40.1402(3), an RP that is conducting response actions at a Public Involvement Site is responsible for all Public Involvement Activities at that site.

F. This Consent Order establishes a framework for:

1. GCC to complete closure obligations under M.G.L. c. 21C and 310 CMR 30.000 *et seq.*, including without limitation 310 CMR 30.584 through 587;
2. GCC and Trinity General to complete post-closure obligations under M.G.L. c. 21C and 310 CMR 30.000 *et seq.*, including without limitation 310 CMR 30.590 through 30.596;
3. GCC and Trinity General to complete Corrective Action measures required by RCRA and its regulations at 40 CFR 264.100 and 264.101 as incorporated by reference in 310 CMR 30.000 *et seq.*;
4. GCC and Trinity General to complete assessment and remediation of any releases of oil and/or hazardous material to the environment at or from the Site,

including identified and suspected releases to soil or groundwater, which meets the requirements and performance standards of M.G.L. c. 21E and the MCP; and

5. GCC and Trinity General to complete one or more Permanent Solutions to the extent feasible, as required by M.G.L. c. 21E and the MCP, to achieve a level of No Significant Risk at the Site. The Site shall not be deemed to have had all the necessary and required response actions unless and until a level of no significant risk exists or has been achieved in compliance with M.G.L. c. 21E and the MCP.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and GCC and Trinity General hereby consent to, this Order:

10. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Because of the releases of hazardous materials at the Site, GCC and Trinity General are subject to the requirements of M.G.L. c. 21C and 310 CMR 30.000 *et seq.*, and with RCRA and its post-closure, Corrective Action and financial assurance regulations, and GCC and Trinity General are subject to the requirements of M.G.L. c. 21E and the MCP for completion of required response actions regarding oil and hazardous material releases at the Site. Necessary response actions conducted by GCC and Trinity General will address the source(s), nature, extent and potential impacts of releases of oil and/or hazardous material at the Site as defined in a Phase II – Comprehensive Site Assessment Report as approved by MassDEP, as hereinafter described in Paragraph 16, and any amendments thereto as approved by MassDEP. No agreement shall, in any way, relieve GCC or Trinity General from their liabilities to MassDEP as current operator and owner, respectively, of the TSDF and the Site, under any federal, state or other laws, including without limitation, M.G.L. c. 21C, 310 CMR 30.000 *et seq.*, M.G.L. c. 21E, the MCP, RCRA or federal RCRA regulations.

11. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

12. The existing financial assurance for TSDF closure, post-closure care and Corrective Action is in the amount of \$1,549,000.00. This amount includes \$1,409,000.00 to cover Corrective Action obligations and \$140,000.00 for closure costs. The parties agree that the financial assurance must be updated to discontinue the financial assurance for closure at the end of the closure period, to account for post-closure care and to increase the amount of Corrective Action costs based on GCC's revised cost estimate submitted on May 31, 2013, which increased estimated Corrective Action costs to \$1,851,766.00. The parties agree that these changes will be achieved as follows:

- A. As to the closure and Corrective Action financial assurance: GCC and Trinity General agree to increase the amount in the Corrective Action financial assurance mechanism to a total of \$1,851,766.00 and provide documentation of such financial assurance to MassDEP in a format approved by MassDEP and otherwise in compliance with Paragraph 15 below. MassDEP will release GCC and Trinity General from their obligations to maintain financial assurance for closure of the TSDF in the amount of \$140,000.00 when: (1) MassDEP accepts GCC's certification of closure of the TSDF; (2) GCC surrenders to MassDEP its License described in Paragraph 9(A) in a form acceptable to MassDEP; and (3) GCC and Trinity General submit to MassDEP documentation of financial assurance for Corrective Action as set forth above. Acceptance of GCC's certification of closure of the TSDF and release of GCC's and Trinity General's closure financial assurance obligations shall be confirmed by MassDEP by notification to GCC and Trinity General in writing.
- B. As to post-closure financial assurance: GCC and Trinity General shall include a revised cost estimate for post-closure care, including, but not limited to, groundwater monitoring and sampling and the other requirements of 310 CMR 30.590 et seq., in its annual submissions pursuant to paragraph 15.E herein, beginning with its annual submittal on February 1, 2014.
13. Completion of Closure: GCC has performed the following actions to complete closure of the TSDF:
- A. Pursuant to the applicable closure requirements of 310 CMR 30.000 *et seq.* and the TSDF closure plan, plan supplements and MassDEP's authorization to proceed with closure work dated July 24, 2012, GCC has completed closure of the TSDF as of the effective date of this Consent Order.
- B. Pursuant to 310 CMR 30.584(1), GCC has removed all hazardous wastes from the TSDF by June 29, 2012, which was ninety (90) days from the date of receipt of the last shipment of wastes, which date was March 30, 2012.
- C. Pursuant to 310 CMR 30.584(2), GCC completed all closure activities in accordance with the TSDF closure plan, plan supplements and MassDEP's authorization to proceed with closure work dated July 24, 2012, no later than September 27, 2012, which is within one hundred and eighty (180) days of the date of receipt of the last shipment of wastes, which date was March 30, 2012.
- D. Pursuant to 310 CMR 30.586, GCC recorded in the appropriate Registry of Deeds or, if the land in question is registered land, in the registry section of the land court for the district wherein the Property lies, a notice with the content required by that regulation. GCC submitted a copy of the filed notice to MassDEP on November 19, 2012.

E. Pursuant to 310 CMR 30.587(1), on November 19, 2012, GCC submitted to MassDEP a certification of closure signed by GCC and by an independent Massachusetts registered professional engineer that the TSDF has been closed in compliance with the requirements of 310 CMR 30.000 *et seq.* and the TSDF closure plan, plan supplements and MassDEP's authorization to proceed with closure work dated July 24, 2012, and that the requirements of 310 CMR 30.586 have been complied with.

F. Until such time as MassDEP notifies GCC and Trinity General in writing that they are no longer required to maintain financial assurance for closure of the TSDF, GCC and Trinity General shall maintain financial assurance for the closure, post-closure care and Corrective Action for the TSDF. In addition, GCC and Trinity General shall promptly submit to MassDEP, on request, any documentation supporting the certification of closure, and they shall promptly submit all requested documentation supporting adequate financial assurance for post-closure and Corrective Action, as described in Paragraph 12 above.

14. Post-Closure: GCC and Trinity General agree that they shall perform the following actions in order to complete post-closure of the TSDF:

A. Pursuant to 310 CMR 30.590 *et seq.*, and 310 CMR 30.602(10), GCC and Trinity General shall comply with all post-closure requirements in 310 CMR 30.000 *et seq.* The post-closure period shall be thirty (30) years from the effective date of this Consent Order. This Consent Order, any documents issued or approved by MassDEP under the terms of this Consent Order, and all response actions performed and submittals made by GCC and Trinity General in compliance with the requirements of M.G.L. c. 21E and 310 CMR 40.0000 *et seq.*, shall be considered the post-closure plan for the TSDF and for Corrective Action measures for the Site as required by 310 CMR 30.000 *et seq.*, including without limitation, 310 CMR 30.593.

B. Pursuant to 310 CMR 30.592(2), at any time prior to the end of the post-closure period specified in Paragraph 14.A. above, MassDEP may shorten the period of post-closure either: (1) if GCC and/or Trinity General so requests it and if the MassDEP makes a determination that shortening the post-closure period is warranted in accordance with the standards of 310 CMR 30.592(2); or (2) if the MassDEP makes such determination on its own initiative. In either case, MassDEP shall issue an order shortening the post-closure period, or the parties may amend this Consent Order in writing to reflect the shortened post-closure period. The requirements for public involvement in 310 CMR 30.592 shall be complied with prior to finalization of such amendment.

C. Pursuant to 310 CMR 30.592(3) at any time prior to the end of the post-closure period specified in Paragraph 14.A. above, MassDEP may lengthen the period of post-closure by making a determination on its own initiative in accordance with the standards of 310 CMR 30.592(3). In such case, MassDEP shall issue an order lengthening the post-

closure period, or the parties may amend this Consent Order in writing to reflect the longer post-closure period. The requirements for public involvement in 310 CMR 30.592 shall be complied with prior to finalization of such amendment.

D. GCC and/or Trinity General shall submit to MassDEP for its approval a plan for security requirements during the post-closure period as required by 310 CMR 30.592(4) and the regulations referenced therein. If, at any time, MassDEP determines that the security requirements are inadequate to protect public health, welfare, safety or the environment, then MassDEP may require GCC and/or Trinity General to submit an amended plan acceptable to MassDEP for review and approval.

E. Pursuant to 310 CMR 30.592(5), GCC and Trinity General agree that they will not allow any post-closure use of the Property on or in which hazardous wastes remain after closure to disturb the integrity of any final cover, liner(s), or any other components of any containment system, or the function of the Site's monitoring, operation or maintenance systems unless MassDEP determines in writing that the disturbance: (a) is necessary to the proposed use of the Property and will not increase the potential hazard to public health, safety, or welfare or the environment; or (b) is necessary to reduce a threat to the public health, safety or welfare or the environment.

F. Pursuant to 310 CMR 30.594, GCC and Trinity General shall record in the appropriate Registry of Deeds or, if the land in question is registered land, in the registry section of the land court for the district wherein the Property lies, a notice with the content required by that regulation and within the timelines prescribed therein. Within thirty (30) days of recording the notice, GCC and Trinity General shall submit a copy of the filed notice to MassDEP. Within thirty (30) days of receipt of a certified copy of said notice from the Registry of Deeds, GCC and Trinity General shall forward a copy of the certified notice to MassDEP.

G. The removal of any hazardous wastes, hazardous waste residues, the liner, if any, or contaminated soils from the Site, as referenced in 310 CMR 30.595, shall be conducted by GCC and Trinity General under the supervision of a Licensed Site Professional ("LSP") and in accordance with all provisions of M.G.L. c. 21E and the MCP and applicable transportation and disposal requirements of 310 CMR 30.000 *et seq.*

H. No later than sixty (60) days after completion of the post-closure period, GCC and Trinity General shall submit to MassDEP for review and approval a certification signed by both GCC and Trinity General and by an independent Massachusetts registered professional engineer and the LSP for the Site, which shall be a post-closure certification as specified in 310 CMR 30.596. Post-closure shall not be considered complete until MassDEP issues its approval in writing of GCC's and Trinity General's certification. Until such time as MassDEP issues such approval and until such time as MassDEP notifies GCC and Trinity General that they are no longer required to maintain financial assurance for the TSDF's and the Site's post-closure care, they shall maintain financial

assurance as more fully described below in Paragraph 15. GCC, Trinity General and their certifying engineer and LSP shall each promptly submit to MassDEP on request any documentation supporting said certification.

15. Financial Assurance. GCC and Trinity General agree that they shall perform the following actions in order to comply with the requirements for Financial Assurance for post-closure and Corrective Action for the TSDF and the Site:

A. In order to secure the full and final completion of post-closure care and Corrective Action in accordance with this Consent Order, GCC and Trinity General shall establish and continuously maintain financial assurance for the benefit of MassDEP in the amount of the most recent and up-to-date estimates of the costs of both post-closure care and Corrective Action.

B. In accordance with 310 CMR 30.900 *et seq.*, including without limitation 310 CMR 30.906, GCC and Trinity General shall establish and continuously maintain financial assurance for post-closure monitoring and maintenance of the TSDF and the Site using the options specified in 310 CMR 30.906(1) through (6) and in compliance with all applicable provisions of 310 CMR 30.000 *et seq.*

C. Pursuant to 310 CMR 30.906(8), GCC and Trinity General may submit a request to MassDEP for its review and approval to discontinue maintenance of financial assurance for post-closure care.

D. In addition to financial assurance for post-closure care, pursuant to 310 CMR 30.602(9) and (10) and 40 CFR 264.101, which is incorporated into such regulations by reference, GCC and Trinity General must also establish and continuously maintain financial assurance for Corrective Action at the TSDF and Corrective Action beyond the TSDF property boundary, which includes, without limitation, the assessment and remediation of oil and/or hazardous materials pursuant to M.G.L. c. 21E and the MCP, where necessary to protect human health and the environment. This financial assurance for Corrective Action must be maintained until Corrective Action is complete.

E. Every year by February 1, GCC and Trinity General shall submit a revised cost estimate for both post-closure care and Corrective Action until both the post-closure care and the Corrective Action work required by this Consent Order are completed. With each annual submission, GCC and Trinity General shall adjust the cost estimates for inflation. In addition, GCC and Trinity General shall adjust the cost estimates of post-closure care and/or Corrective Action if MassDEP determines that any additional work is required, or if any other condition increases or decreases the cost of the work to be performed under this Consent Order.

F. GCC and Trinity General shall submit each cost estimate described in Paragraphs 15.E, 16.I, 16.K, 16.M and 16.Q to MassDEP for review. MassDEP will review each

cost estimate and notify GCC and Trinity General in writing of MassDEP's approval, disapproval, or modification of the cost estimate and of the deadline for increasing or decreasing the amount held in Corrective Action or post-closure care financial assurance.

G. If, at any time, MassDEP determines that a financial assurance instrument provided pursuant to this Consent Order is inadequate, or no longer satisfies the requirements set forth or incorporated by reference in this Consent Order, whether due to an increase in the estimated cost of completing the work, the filing of bankruptcy by or establishment of a receivership for the financial or other institution that holds and/or issues the financial assurance instrument, a change in the requirements for the form of the financial assurance instrument by the financial or other institution that holds and/or issues the financial assurance instrument or for any other reason, MassDEP shall so notify GCC and Trinity General in writing. If, at any time, GCC or Trinity General becomes aware of information indicating that any financial assurance instrument provided pursuant to this Consent Order is inadequate or no longer satisfies the requirements set forth or incorporated by reference in this Consent Order, whether due to an increase in the estimated cost of completing the work or for any other reason, then GCC and/or Trinity General shall notify MassDEP and the other party in writing of such information within ten (10) days. Within thirty (30) days of receipt of notice of MassDEP's determination, or within thirty (30) days of GCC or Trinity General becoming aware of such information, as the case may be, GCC and Trinity General shall obtain and present to MassDEP for approval a proposal for a revised or alternative form of financial assurance that satisfies all requirements set forth or incorporated by reference in this Consent Order.

H. GCC's or Trinity General's inability or failure to establish or maintain financial assurance for completion of any portion of the requirements of Paragraphs 14, 15 or 16 of this Consent Order ("GCC/TG Work") shall in no way excuse performance of any other requirements of this Consent Order, including, without limitation, the obligation of GCC or Trinity General to complete the GCC/TG Work in accordance with the terms of this Consent Order.

I. MassDEP agrees to consider, in the period between the effective date of this Consent Order and the date of completion of the GCC/TG Work associated with the RCRA Corrective Action as determined by MassDEP, adjustments in the amount of the financial assurance mechanism posted by GCC and Trinity General in accordance with the progress in such GCC/TG Work and the GCC/TG Work still required before completion. After the completion of each major phase of GCC/TG Work when data confirms the effectiveness of such GCC/TG Work as determined by MassDEP, GCC or Trinity General may submit for review and approval by MassDEP one or more written requests for reduction in the amount of the Corrective Action financial assurance mechanism.

16. Corrective Action and Response Actions: GCC and Trinity General shall perform the following actions in order to comply with the requirements of M.G.L. c. 21C and 310 CMR

30.000 *et seq.*, and with RCRA and its implementing regulations with respect to completion of Corrective Action and with the requirements of M.G.L. c. 21E and the MCP with respect to completion of required response actions:

A. GCC and Trinity General shall comply with the Corrective Action requirements of M.G.L. c. 21C, 310 CMR 30.000 *et seq.*, and RCRA and its implementing regulations to complete Corrective Action at the Site. The Corrective Action requirements of 310 CMR 30.000 *et seq.*, include without limitation 310 CMR 30.661 through 30.672 and 310 CMR 30.602(9), which incorporates the provisions of 40 CFR 264.101 and 310 CMR 40.0000 *et seq.* by reference. GCC and Trinity General shall achieve compliance with the Corrective Action requirements cited herein by completing required response actions in accordance with M.G.L. c. 21E and the MCP, under the oversight of a LSP, as well as any MassDEP oversight, and by complying with the requirements of this Paragraph 16.

B. MassDEP may elect to review and approve any and all of GCC's and Trinity General's submittals required under this Consent Order. However, at a minimum, MassDEP will review and approve with or without conditions in whole or in part (1) the Phase II Comprehensive Site Assessment ("Phase II") Scope of Work; (2) the Phase III Identification, Evaluation and Selection of Comprehensive Remedial Action Alternatives Report ("Phase III Report"); and (3) GCC's and Trinity General's responses to any public comments that are received on the remedy proposed for the Site. MassDEP also will conduct an audit when the Corrective Action process has been completed to ensure that the Corrective Actions meet the performance standards set forth in M.G.L. c. 21E and the MCP, and MassDEP will review and approve of GCC's and Trinity General's responses to public comments received on the MassDEP audit. Any further oversight by MassDEP will be conducted at its sole discretion.

C. GCC and Trinity General shall proceed with the response actions that have been approved with or without conditions (in whole or in part) unless otherwise specified by MassDEP. If MassDEP disapproves any response actions in whole or in part, GCC and Trinity General shall revise the response action plan to correct the deficiencies identified by MassDEP and resubmit the proposed response action plan to MassDEP for approval within forty-five (45) days of the notification of the deficiencies, or by a deadline otherwise specified by MassDEP.

D. Failure to correct any deficiencies that MassDEP has identified or a failure to resubmit the corrected response action plan to MassDEP for approval within forty-five (45) days or by a deadline otherwise specified, as provided above in Paragraph 16.C, shall constitute a violation of this Consent Order and a Performance Failure pursuant to Paragraph 17.

E. Documents or reports approved (with or without conditions) by MassDEP shall be made a part of this Consent Order. GCC and Trinity General shall undertake all response actions and other activities required herein in accordance with the provisions of such

documents or reports as well as the requirements and deadlines set forth in MassDEP's approvals. Failure to do so shall constitute a violation of this Consent Order.

F. GCC and Trinity General shall comply with all applicable Public Involvement activities regarding the Site as described in 310 CMR 40.1400 *et seq.* In particular, GCC and Trinity General shall comply with the Public Involvement Plan for the Site in accordance with 310 CMR 40.1405. In addition, GCC and Trinity General shall comply with the additional public notice, public comment and public involvement requirements set forth in Paragraphs 16.J, 16.K, 16.O and 16.P.

G. Within ninety (90) days from the effective date of this Consent Order, GCC and Trinity General shall submit to MassDEP a Tier Classification Submittal which meets the requirements set forth in 310 CMR 40.0510, and a Phase II Scope of Work. The purpose of the Phase II Scope of Work shall be to propose any further assessment activities for the Site necessary to meet the requirements of a Phase II Comprehensive Site Assessment ("Phase II Report") as set forth in 310 CMR 40.0830 through 40.0840. The response actions being performed in accordance with the approved Phase II Scope of Work shall be completed and a report of the findings submitted to MassDEP in accordance with a deadline established by MassDEP.

H. After the public comment period, as established pursuant to the Public Involvement Plan for the Site, for the report described in Paragraph 16.G above, MassDEP will determine if any further Comprehensive Site Assessment activities are necessary to meet the performance standards of the Massachusetts Contingency Plan. Any further Phase II Comprehensive Site Assessment activities, including but not limited to a Human Health Risk Characterization and an Environmental Risk Characterization, shall be completed after MassDEP approval of scopes of work for those activities, and in accordance with deadlines established by MassDEP.

I. Once all Phase II Comprehensive Site Assessment activities are completed, GCC and Trinity General shall submit a Phase II Report and Completion Statement, which meets the requirements set forth in 310 CMR 40.0830 through 40.0840, in accordance with a deadline established by MassDEP. Such Phase II Report and Completion Statement shall also include an amended cost estimate for completion of the remedy selection and implementation phases (Phases III and IV) of response actions.

J. Prior to the submission of a Phase III Report as described below in Paragraph 16.K, GCC and Trinity General shall submit a draft Phase III Report and provide a minimum thirty (30) day comment period on the draft Phase III Report and comply with any other public involvement requirements as may be described in the approved Public Involvement Plan. GCC and Trinity General shall give public notice of the opportunity to submit comments, and of a public meeting by publishing a notice in a newspaper having a substantial circulation in the area of the Site. The notice shall identify the MassDEP contact person and the length of the public comment period. In addition, the

notice shall be submitted to all persons on the Site mailing list maintained pursuant to 310 CMR 40.1400.

K. GCC and Trinity General shall submit a Phase III Report which meets the requirements set forth in 310 CMR 40.0850 through 40.0864, in accordance with a deadline established by MassDEP. The Phase III Report shall include an updated estimate of comparative costs of the Remedial Action Alternatives evaluated. Along with the Phase III Report, GCC and Trinity General shall provide MassDEP a summary of all the public comments received with an explanation of how the various comments have been addressed. GCC and Trinity General shall obtain approval from MassDEP of the Phase III Report and of the draft response to comments. GCC and Trinity General shall respond to public comments prior to finalization of the Phase III Report. Such Phase III Report shall also include an amended cost estimate for completion of the remedy implementation phase (Phase IV) of response actions. Pursuant to Paragraph 15.F above, MassDEP will review the cost estimate and notify GCC and Trinity General in writing of MassDEP's approval, disapproval, or modification of the cost estimate.

L. Within ninety (90) days of submittal of the Phase III Report, GCC and Trinity General shall provide assurance of financial responsibility in an amount sufficient to cover all of the costs of completing the response actions covered by the Phase III Report, including, but not limited to, the selected Remedial Action Alternative. Pursuant to 40 CFR 264.101, which is incorporated by reference into 310 CMR 30.000 *et seq.*, assurances of financial responsibility for completing Corrective Action must be provided.

M. GCC and Trinity General shall submit to MassDEP a Phase IV Report, which meets the requirements set forth in 310 CMR 40.0870 through 40.0881, in accordance with a deadline established by MassDEP. The Phase IV Report shall include a schedule for implementation of the selected remedial action alternative. Such Phase IV Report shall also include an amended cost estimate for completion of the remedy implementation phase (Phase IV) of response actions. Pursuant to Paragraph 15.F above, MassDEP will review the cost estimate and notify GCC and Trinity General in writing of MassDEP's approval, disapproval, or modification of the cost estimate.

N. Within ninety (90) days of submittal of the Phase IV Report, GCC and Trinity General shall provide updated assurance of financial responsibility in an amount sufficient to cover all of the costs of completing the response actions covered by the Phase IV Report, including, but not limited to, the selected Remedial Action Alternative. Pursuant to 40 CFR 264.101, which is incorporated by reference into 310 CMR 30.000 *et seq.*, assurances of financial responsibility for completing Corrective Action must be provided.

O. Prior to the submittal of a Response Action Outcome ("RAO") Statement for the Site, or, if appropriate, a Remedy Operation Status ("ROS") Submittal, GCC and Trinity General shall provide a minimum thirty (30) day comment period, which may include a

public meeting as required by MassDEP, for the public to comment on the proposed RAO Statement or ROS Submittal. GCC and Trinity General shall give public notice of the opportunity to submit comments, and of any public meeting, by publishing a notice in a newspaper having a substantial circulation in the area of the Site. The notice shall identify the MassDEP contact person and the length of the public comment period. In addition, the notice shall be submitted to all persons on the Site mailing list maintained pursuant to 310 CMR 40.1400. GCC and Trinity General shall provide a draft response to public comments to MassDEP for its review and approval in accordance with any deadlines established by MassDEP.

P. GCC and Trinity General shall submit to MassDEP an RAO Statement for the Site, which meets the requirements of 310 CMR 40.1000 through 40.1099 or, if appropriate, an ROS Submittal, which meets the requirements of 310 CMR 40.0890 through 40.0896, in accordance with a deadline established by MassDEP. Along with the RAO Statement or the ROS Submittal, GCC and Trinity General shall provide MassDEP a summary of all the public comments along with a copy of all public comments received with an explanation of how the various comments have been addressed in the final RAO Statement or the ROS Submittal. Additionally, if any Activity and Use Limitation (“AUL”) is required as a part of a final RAO, such AUL shall be recorded in compliance with all requirements of M.G.L. c. 21E and the MCP prior to GCC’s and Trinity General’s submittal of the RAO Statement to MassDEP. A certified copy of the AUL shall be attached as an addendum to the RAO Statement and such AUL shall not be inconsistent with the deed notice recorded pursuant to Paragraph 13.D. herein.

Q. Ninety days after the recording of the AUL, GCC and Trinity General shall submit a cost estimate for completion of Phase V response actions. Pursuant to Paragraph 15.F above, MassDEP will review the cost estimate and notify GCC and Trinity General in writing of MassDEP’s approval, disapproval, or modification of the cost estimate. Such cost estimate may also include a request for a reduction in the financial assurance for Corrective Action if the projected cost estimate for Phase V is less than the current amount held in such financial assurance.

R. GCC and Trinity General shall submit to MassDEP a Phase V Status Report as described in 310 CMR 40.0892 six months after submittal of the Phase IV Completion Statement and every six months thereafter for the duration of the operation of the remedy. Each Status Report shall document activities that occurred over the period of time since the previously submitted Status Report. Each Status Report shall contain the information required in 310 CMR 40.0892(2), including without limitation, all groundwater sampling results for that period.

S. Corrective Action measures pursuant to M.G.L. c. 21C and 310 CMR 30.000 *et seq.* shall not be considered complete until MassDEP makes a determination that the actions taken have complied with all applicable requirements by issuing a Notice of Audit Finding (“NOAF”) in which MassDEP states that response actions were completed

in compliance with M.G.L. c. 21E and the MCP. MassDEP will make its determination on whether the final RAO Statement or ROS Submittal complies with M.G.L. c. 21E, the MCP, M.G.L. c. 21C and 310 CMR 30.000 *et seq.* after MassDEP's audit and after reviewing public comments received by GCC and Trinity General as well as GCC and Trinity General's explanation of how all such comments were addressed in the final RAO Statement or ROS Submittal. After making its determination, MassDEP will either: (1) issue a determination directing GCC and Trinity General to conduct additional work and/or to make changes to the RAO Statement or the ROS Submittal; or (2) issue a final NOAF with a determination that the final RAO Statement or ROS Submittal is in compliance with M.G.L. c. 21E and the MCP. A draft notice of MassDEP's proposed determination will be issued for public comment, with a minimum thirty (30) day comment period, which may include a public meeting.

T. Nothing in this Consent Order shall limit MassDEP's authority to enforce its laws or regulations or issue any order to prevent or abate releases or sources of oil and/or hazardous materials or potential releases or sources of oil and/or hazardous materials.

U. GCC and Trinity General are Permittees, as that term is defined in 310 CMR 4.02, for the purpose of assessing and collecting annual compliance fees pursuant to M.G.L. c. 21A, §18 and M.G.L. c. 21E, §3B. GCC and Trinity General are responsible for payment of all Annual Compliance Fees for which they can be assessed pursuant to 310 CMR 4.00 *et seq.*, M.G.L. c. 21E and the MCP.

V. A failure to comply with any of the requirements of this Consent Order including, but not limited to, the Corrective Action and response action requirements listed above will be considered a violation of this Consent Order.

W. In the event that any previously unreported spills or releases of oil and/or hazardous materials are discovered at the Site, or if any new spills or releases occur at the Site following execution of this Consent Order, GCC and Trinity General shall conduct all necessary response actions as required by M.G.L. c. 21E and the MCP, and comply with the notification requirements contained at M.G.L. c. 21E, § 7 and 310 CMR 40.0300 *et seq.*

17. Performance Failure

A. Performance Failure of GCC and Trinity General.

1. In the event that MassDEP determines that GCC or Trinity General (i) has ceased implementation of any GCC/TG Work, (ii) is significantly or repeatedly deficient or late in its performance of the GCC/TG Work, or (iii) is implementing the GCC/TG Work in a manner that may cause an endangerment to human health or the environment, including but not limited to an Imminent Hazard as that term is defined in 310 CMR 40.0000, MassDEP may issue a written notice

(“Performance Failure Notice”) to GCC and to Trinity General, and to the financial assurance provider of GCC and Trinity General, of GCC’s and/or Trinity General’s failure to perform (“Performance Failure”). The Performance Failure Notice issued by MassDEP will specify the grounds upon which such a notice was issued and will provide GCC and Trinity General with a period of forty-five (45) days within which to remedy the circumstances giving rise to the issuance of such notice, or, in the case of an Imminent Hazard, a deadline established by MassDEP.

2. Failure by GCC and Trinity General to remedy the relevant Performance Failure to MassDEP’s satisfaction before the expiration of the forty-five (45) day notice period or MassDEP deadline specified in Paragraph 17.A.1 shall trigger MassDEP’s right to have immediate access to, and benefit of, the financial assurance provided pursuant to this Consent Order. MassDEP may at any time thereafter direct the financial assurance provider to immediately make available to MassDEP the remaining funds obligated under the financial assurance instrument.

3. If MassDEP has determined that any of the circumstances described in Paragraphs 17.A.1, or 17.A.2 have occurred, and if MassDEP is nevertheless unable after reasonable efforts to secure performance of the GCC/TG Work in accordance with this Consent Order or payment of the funds from the financial assurance provider pursuant to this Consent Order, then, upon receiving written notice from MassDEP, GCC and Trinity General shall within forty-five (45) days thereafter deposit into the existing financial assurance instrument, or a newly created financial assurance instrument approved by MassDEP, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount equal to the estimated cost of the remaining GCC/TG Work to be performed in accordance with this Consent Order as of such date, as determined by MassDEP.

B. Dispute Resolution

1. GCC and/or Trinity General may invoke the following dispute resolution procedures to challenge a decision by MassDEP that a Performance Failure has occurred pursuant to Paragraph 17.A. GCC and/or Trinity General shall invoke dispute resolution by providing written notice to MassDEP within five (5) days after obtaining knowledge of such a dispute. Such written notice shall include a description of the nature of the dispute. Failure to provide MassDEP with a written notice of dispute within the five (5) day period shall constitute a waiver of GCC’s and/or Trinity General’s respective rights to dispute resolution (e.g., if GCC files a timely notice, but Trinity General does not, then Trinity General will have waived its rights to dispute resolution).

2. The parties shall participate in a conference call or meeting to attempt to resolve the dispute within ten (10) days of MassDEP's receipt of GCC's and/or Trinity General's notice of dispute, whichever is later.

3. If the parties are unable to resolve the dispute as a result of the conference call or meeting, GCC and/or Trinity General shall, within ten (10) days of said conference call or meeting submit a written Statement of Position to MassDEP. Such Statement of Position shall, without limitation, set forth the specific points of dispute, the position of GCC and/or Trinity General and the basis for it, any action(s) GCC and/or Trinity General considers necessary to resolve the dispute, any factual data, analysis or opinion supporting GCC's and/or Trinity General's position, and any supporting documentation upon which GCC and/or Trinity General relies. Failure to provide such Statement of Position within the ten (10) day period shall constitute a waiver of GCC's and/or Trinity General's respective rights to further dispute resolution.

4. Within fourteen (14) days after receipt of such Statement of Position, MassDEP shall present a written Statement of Position to GCC and/or Trinity General. Such Statement of Position shall, without limitation, set forth the specific points of dispute, the position of MassDEP and the basis for it, any action(s) MassDEP considers necessary to resolve the dispute, any factual data, analysis or opinion supporting MassDEP's position, and any supporting documentation upon which MassDEP relies.

5. The Statements of Position will be submitted to the Deputy Commissioner for Operations and Environmental Compliance or his/her designee ("Deputy Commissioner") on the date MassDEP presents its written Statement of Position to GCC and/or Trinity General. The Deputy Commissioner shall issue a final written decision on the dispute based upon the Statements of Position and any other relevant information, which may include a meeting with one or both parties.

6. In the event that GCC and/or Trinity General is aggrieved by the Deputy Commissioner's final written decision, then such party has the right to request an adjudicatory hearing under M.G.L. c. 30A within thirty (30) days following the issuance of the final written decision. Failure by any party to request an adjudicatory hearing by that date thirty (30) days after the date of issuance of the Deputy Commissioner's final written decision shall constitute a waiver of that party's right to hearing and of further administrative or judicial review. In seeking such an adjudicatory hearing under M.G.L. c. 30A, the party may not contest the validity, terms and binding nature of this Consent Order. Such party's appeal rights shall be limited to contesting the grounds for MassDEP's issuance of a Performance Failure Notice pursuant to Paragraph 17.A. The final decision of the Commissioner from the adjudicatory proceeding shall be subject to judicial review under M.G.L. c. 30A, § 14. In making all such petitions to the court, the

party shall have the burden of proving that MassDEP's decision was arbitrary, capricious, or otherwise not in accordance with the law.

18. Recordkeeping and Reporting

A. GCC and Trinity General shall retain, during the pendency of this Consent Order and for at least six (6) years after the Consent Order terminates, all data and all final documents now in the possession or control of GCC and/or Trinity General, or that come into the possession or control of GCC and/or Trinity General, which relate to this Consent Order. GCC, and Trinity General shall notify MassDEP in writing ninety (90) days prior to destroying any such records, and give MassDEP the opportunity to take possession of any non-privileged documents.

B. Within thirty (30) days of the effective date of this Consent Order, GCC and Trinity General shall enter into an agreement with any agent, consultant, or contractor ("agents") GCC and Trinity General has hired for the purpose of carrying out the terms of this Consent Order, to give GCC and Trinity General a copy of all final data and final non-privileged documents produced pursuant to this Consent Order.

C. GCC and Trinity General shall not assert any privilege claim concerning any factual data gathered during any investigation, sampling, or other actions required by this Consent Order.

D. GCC and Trinity General shall store all documents pertaining to this Consent Order in a centralized location to afford ease of access by MassDEP or its representatives. GCC and Trinity General shall provide any requested document(s) within fifteen (15) days of MassDEP's request.

19. Unless submitted via eDEP or except as otherwise provided herein, all notices, submittals and other communications required from GCC and/or Trinity General by Paragraph 16 of this Consent Order shall be directed to:

Stephen M. Johnson (or such other person as may be designated by MassDEP)
Deputy Regional Director
MassDEP - Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887

All notices, submittals and other communications required by this Consent Order pursuant to Paragraphs 13, 14 and 15 shall be directed to:

James Doucett (or such other person as may be designated by MassDEP)
Acting Director, Business Compliance Division
Bureau of Waste Prevention

Administrative Consent Order – General Chemical Corporation
DRAFT – 12-3-13 –PUBLIC COMMENT DRAFT

MassDEP – Boston Office
One Winter Street – 7th Floor
Boston MA 02108

All other notices, submittals and other communications from GCC and/or Trinity General required by this Consent Order shall be directed to both Mr. Johnson and Mr. Doucett at the addresses above.

Such notices, submittals and other communications shall be considered delivered by GCC and/or Trinity General upon receipt by MassDEP.

Unless otherwise provided herein, all notices and communication from MassDEP required by this Consent Order shall be directed to:

If to GCC:

Michael Persico, President (or such other person as designated by GCC)
General Chemical Corporation
201 South First Street
Elizabeth, New jersey 07206

If to Trinity General:

Michael Persico, President (or such other person as designated by Trinity General)
General Chemical Corporation
201 South First Street
Elizabeth, New jersey 07206

Such notices, submittals and other communications shall be considered delivered to GCC and/or Trinity General upon issuance by MassDEP.

20. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving GCC and/or Trinity General or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

21. GCC and/or Trinity General understand, and hereby waive the right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

22. This Consent Order may be modified only by written agreement of the parties hereto.

23. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

24. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to: (a) enforce this Consent Order in an administrative or judicial proceeding; (b) recover costs incurred by MassDEP in connection with response actions conducted at the Site; and (c) recover damages for injury to and for destruction or loss of natural resources pursuant to M.G.L. c. 21E, § 5 or 42 U.S.C. 9601, et seq. GCC and Trinity General reserve any rights that they may have to appeal or defend any such order, claim, action, suit, cause of action or demand, except that said parties shall not challenge the validity, terms and binding nature of this Consent Order.

Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting MassDEP's authority to: (a) perform response actions at the Site or (b) require GCC and/or Trinity General to conduct response actions at the Site or take other actions beyond those required by this Consent Order in order to comply with all applicable laws and regulations including, without limitation, M.G.L. c. 21E and the MCP.

25. GCC and/or Trinity General enter into this Consent Order without admitting or denying the facts or allegations set forth herein. However, GCC and/or Trinity General agree not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

26. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or GCC and/or Trinity General with respect to any subject matter not covered by this Consent Order.

27. This Consent Order shall be binding upon GCC and Trinity General and upon GCC's and Trinity General's successors and assigns. GCC and Trinity General shall not violate this Consent Order and shall not allow or suffer GCC's and Trinity General's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until GCC and Trinity General have fully complied with this Consent Order, GCC and Trinity General shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

28. If GCC or Trinity General violate any provision of the Consent Order, GCC and Trinity General shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000 per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day a violation is corrected or performance is completed, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified GCC or Trinity General of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way GCC's and Trinity General's obligations to comply or to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of GCC's and Trinity General's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, GCC and Trinity General shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

GCC and Trinity General reserve whatever rights they may have to contest MassDEP's determination that GCC or Trinity General failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, GCC and Trinity General agree to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

29. Failure on the part of MassDEP to complain of any action or inaction on the part of GCC or Trinity General shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

30. GCC and Trinity General agree to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the TSDF and Site for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

31. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

32. All applicable transmittal fees shall accompany any submission(s) required by this Consent Order.

33. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

34. This Consent Order shall become effective on the date that it is executed by MassDEP.

35. GCC's and Trinity General's obligations under this Consent Order shall cease upon GCC's and Trinity General's completion of all actions required pursuant to this Consent Order.

Consented To:

GENERAL CHEMICAL CORPORATION

By: _____
Michael Persico, President
Federal Employer Identification No.: 042442730

Date: _____

TRINITY GENERAL CORPORATION

By: _____
Michael Persico, President
Federal Employer Identification No.: 042554644

Date: _____

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____
Eric Worrall
Acting Regional Director
MassDEP Northeast Regional Office

Date: _____

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Administrative Consent Order – General Chemical Corporation
DRAFT – 12-3-13 –PUBLIC COMMENT DRAFT

Issued By:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: _____

James Doucett

Division Director, Business Compliance Division

MassDEP Bureau of Waste Prevention

Date: _____